

AGRICULTURAL AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. Sandall

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to local governments and agriculture.

Highlighted Provisions:

This bill:

- ▶ expands the scope of the Agricultural Operations Nuisance Act;
- ▶ modifies definitions;
- ▶ addresses ordinances, regulations, and policy that may not be enacted, established, or enforced by certain political subdivisions;
- ▶ states when agricultural operations are considered in compliance with certain local ordinances, regulations, or policies;
- ▶ prohibits certain political subdivisions from taking specified actions related to agricultural operation under certain circumstances; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

4-44-101, as enacted by Laws of Utah 2019, Chapter 81



28 **4-44-102**, as enacted by Laws of Utah 2019, Chapter 81
 29 **4-44-202**, as enacted by Laws of Utah 2019, Chapter 81
 30 **78B-6-1101**, as last amended by Laws of Utah 2019, Chapters 81 and 227

31 ENACTS:

32 **4-44-301**, Utah Code Annotated 1953



34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **4-44-101** is amended to read:

36 **CHAPTER 44. AGRICULTURAL OPERATIONS ACT**

37 **4-44-101. Title.**

38 This chapter is known as "Agricultural Operations [~~Nuisances~~] Act."

39 Section 2. Section **4-44-102** is amended to read:

40 **4-44-102. Definitions.**

41 As used in this chapter:

42 (1) (a) "Agricultural operation" means an activity engaged in the production for
 43 commercial purposes of crops, orchards, livestock, poultry, aquaculture, livestock products, or
 44 poultry products and the appurtenances, facilities, equipment, and property used to facilitate the
 45 activity.

46 (b) "Agricultural operation" includes an agricultural protection area established under
 47 Title 17, Chapter 41, Agriculture, Industrial, or Critical Infrastructure Materials Protection
 48 Areas.

49 (2) "Fundamental change to the operation" does not include:

- 50 (a) a change in ownership or size;
- 51 (b) an interruption of farming for a period of no more than three years;
- 52 (c) participation in a government-sponsored agricultural program;
- 53 (d) employment of new technology; or
- 54 (e) a change in the type of agricultural product produced.

55 (3) "Nuisance" means anything that is injurious to health, indecent, offensive to the
 56 senses, or an obstruction to the free use of property, so as to interfere with the comfortable
 57 enjoyment of life or property.

58 Section 3. Section **4-44-202** is amended to read:

59 **4-44-202. Application of other statutes -- Ordinances.**

60 (1) (a) In a civil action for nuisance or a criminal action for public nuisance under
61 Section 76-10-803, it is a defense if the action involves an agricultural [~~operations~~] operation
62 and [~~those~~] the agricultural [~~operations are~~] operation is conducted in the normal and ordinary
63 course of agricultural operations or conducted in accordance with sound agricultural practices.

64 (b) [~~Agricultural operations~~] An agricultural operation undertaken in conformity with
65 federal, state, and local laws and regulations, including zoning ordinances, [~~are~~] is presumed to
66 be operating within sound agricultural practices.

67 (2) If the agricultural [~~operations occur~~] operation occurs in an agricultural protection
68 area, as defined in Section 17-41-101, Section 17-41-403 governs the action for nuisance.

69 (3) (a) An ordinance of a political subdivision that would make the operation of an
70 agricultural operation [~~or appurtenances to an agricultural operation~~] a nuisance or that provide
71 for abatement of the agricultural operation as a nuisance does not apply to an agricultural
72 operation that is conducted in the normal and ordinary course of agricultural operations or
73 conducted in accordance with sound agricultural practices.

74 (b) An agricultural operation undertaken in conformity with federal, state, and local
75 laws and regulations, including zoning ordinances, [~~are~~] is presumed to be operating within
76 sound agricultural practices.

77 Section 4. Section **4-44-301** is enacted to read:

78 **Part 3. Scope of Local Authority**

79 **4-44-301. Limitations on an ordinance, regulation, rule, or policy.**

80 (1) A county of the third, fourth, fifth, or sixth class, or a political subdivision within
81 those counties may not enact, establish, or enforce an ordinance, regulation, or policy if the
82 ordinance, regulation, or policy:

83 (a) establishes a setback greater than two miles from a city or town for an agricultural
84 operation on property that is designated or zoned as agriculture, range and forest, or other
85 mixed use that allows any agricultural operation; or

86 (b) adopts or enforces a standard that is more stringent than a state or federal
87 environmental regulation imposed on an agricultural operation.

88 (2) An agricultural operation is considered to be in compliance with an environmental
89 ordinance, regulation, or policy of a county of the third, fourth, fifth, or sixth class, or a

90 political subdivision within those counties if the agricultural operation:

91 (a) is on property that is designated or zoned as agriculture, range and forest, or other
92 mixed use that allows agricultural operations;

93 (b) complies with state and federal statutes and rules governing the agricultural
94 operation; and

95 (c) follows best management practices, as confirmed by the Department of Agriculture
96 and Food, if the county of the third, fourth, fifth, or sixth class, or a political subdivision within
97 those counties challenges whether the agricultural operation follows best management
98 practices.

99 (3) A county of the third, fourth, fifth, or sixth class, or a political subdivision within
100 those counties may not:

101 (a) take action related to an agricultural operation that is not directly and reasonably
102 related to the development of an agricultural operation;

103 (b) impose a condition that is based upon animal species or the type of livestock
104 housing; or

105 (c) require that an agricultural operation rezone any property if the property to be
106 developed is designated or zoned as agriculture, range and forest, or other mixed use that
107 allows any agricultural operation.

108 Section 5. Section **78B-6-1101** is amended to read:

109 **78B-6-1101. Definitions -- Nuisance -- Right of action -- Agriculture operations.**

110 (1) A nuisance is anything that is injurious to health, indecent, offensive to the senses,
111 or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment
112 of life or property. A nuisance may be the subject of an action.

113 (2) A nuisance may include the following:

114 (a) drug houses and drug dealing as provided in Section [78B-6-1107](#);

115 (b) gambling as provided in Title 76, Chapter 10, Part 11, Gambling;

116 (c) criminal activity committed in concert with two or more persons as provided in
117 Section [76-3-203.1](#);

118 (d) criminal activity committed for the benefit of, at the direction of, or in association
119 with any criminal street gang as defined in Section [76-9-802](#);

120 (e) criminal activity committed to gain recognition, acceptance, membership, or

121 increased status with a criminal street gang as defined in Section 76-9-802;

122 (f) party houses that frequently create conditions defined in Subsection (1); and

123 (g) prostitution as provided in Title 76, Chapter 10, Part 13, Prostitution.

124 (3) A nuisance under this part includes tobacco smoke that drifts into a residential unit

125 a person rents, leases, or owns, from another residential or commercial unit and the smoke:

126 (a) drifts in more than once in each of two or more consecutive seven-day periods; and

127 (b) creates any of the conditions under Subsection (1).

128 (4) Subsection (3) does not apply to:

129 (a) a residential rental unit available for temporary rental, such as for a vacation, or

130 available for only 30 or fewer days at a time; or

131 (b) a hotel or motel room.

132 (5) Subsection (3) does not apply to a unit that is part of a timeshare development, as

133 defined in Section 57-19-2, or subject to a timeshare interest as defined in Section 57-19-2.

134 (6) An action may be brought by a person whose property is injuriously affected, or

135 whose personal enjoyment is lessened by the nuisance.

136 (7) An action for nuisance against an agricultural operation is governed by Title 4,

137 Chapter 44, Agricultural Operations [Nuisances] Act.

138 (8) "Critical infrastructure materials operations" means the same as that term is defined

139 in Section 10-9a-901.

140 (9) "Manufacturing facility" means a factory, plant, or other facility including its

141 appurtenances, where the form of raw materials, processed materials, commodities, or other

142 physical objects is converted or otherwise changed into other materials, commodities, or

143 physical objects or where such materials, commodities, or physical objects are combined to

144 form a new material, commodity, or physical object.